

Steven F. Cherry (*pro hac vice*)  
Gordon Pearson (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006-3642  
Telephone: (202) 663-6000  
Facsimile: (202) 663-6363  
Steven.Cherry@wilmerhale.com  
Gordon.Pearson@wilmerhale.com

*Attorneys for Defendant Chi Mei Corporation, Chi Mei Optoelectronics Corp., CMO Japan Co., Ltd., Chi Mei Optoelectronics USA, Inc., Nexgen Mediatech Inc., and Nexgen Mediatech USA, Inc.*

**[Additional Defendants and Counsel  
listed on signature page]**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: TFT-LCD (FLAT PANEL)  
ANTITRUST LITIGATION

Master File No. M: 07-1827 SI  
MDL No. 1827

This Document Relates To:  
DIRECT PURCHASER ACTIONS

**OBJECTION TO DIRECT PURCHASER  
PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT  
WITH DEFENDANT CHUNGHWA  
PICTURE TUBES, LTD.**

Date: February 5, 2010  
Time: 9:00 a.m.  
Dept.: Courtroom 10, 19<sup>th</sup> Floor  
Judge: Hon. Susan Illston

1 The undersigned Defendants object to Direct Purchaser Plaintiffs' ("Direct Plaintiffs'")  
 2 Motion for Preliminary Approval of their proposed class settlement with defendant Chunghwa  
 3 Picture Tubes ("CPT") (Dkt. 1440). Direct Plaintiffs' Motion is premature. In particular,  
 4 consideration of their request to certify a settlement class at this stage of the proceedings – before the  
 5 Court has ruled on the Direct Plaintiffs' pending class certification motion in the consolidated  
 6 litigation – would be inefficient and could potentially result in confusing and inconsistent notices to  
 7 potential class members. Defendants therefore respectfully ask the Court to defer consideration of  
 8 the Direct Plaintiffs' Motion for Preliminary Approval until the Court has ruled on the pending  
 9 motion for class certification.

10 Such deferral would not prejudice any potential class members. Direct Plaintiffs do not  
 11 propose distributing any funds received from CPT at this time. *See* Pls.' Mot. at 17. Instead, they  
 12 propose holding CPT's \$10 million payment in an interest-bearing escrow account until the end of  
 13 the litigation. *Id.* No benefit would accrue to anyone from addressing the Direct Plaintiffs' Motion  
 14 prematurely. Moreover, Direct Plaintiffs cannot plausibly claim an urgent need for the Court to do  
 15 so, when Direct Plaintiffs themselves waited nearly ten months before seeking approval of the  
 16 proposed CPT settlement. (Fastiff Decl. (Dkt. 1441), Ex. A at 1.)

17 On the other hand, the benefits of a deferral would be significant. The proposed settlement  
 18 class set forth in the Direct Plaintiffs' Motion overlaps precisely with, and suffers from the same  
 19 defects as, the proposed litigation class the Direct Plaintiffs have asked this Court to certify in their  
 20 pending class certification motion. The parties have extensively briefed the Direct Plaintiffs' class  
 21 certification motion, submitted detailed expert reports, and presented oral argument. Defendants  
 22 have shown that the mammoth, eleven-year, proposed class is virtually unprecedented in scope and  
 23 complexity as it attempts to sweep in every type of purchaser of every type of TFT-LCD panel and  
 24 every type of product containing a TFT-LCD panel manufactured by a defendant (or by unspecified  
 25 affiliates and co-conspirators) since the "relative infancy" of the rapidly evolving TFT-LCD  
 26 industry. (Direct Plaintiffs' Third Am. Compl. ¶ 163 (Dkt. 1416).)

1 The Court should resolve the complex and important issue of class certification on the basis  
 2 of the extensive record in the consolidated litigation. Separately considering now whether to certify  
 3 this same class for settlement purposes would be neither a practical nor an efficient use of judicial  
 4 resources. Requests to certify settlement classes warrant “heightened” scrutiny to protect absent  
 5 class members because the settlement process necessarily lacks the adversarial development of a  
 6 record regarding contested class issues. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620  
 7 (1997); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *In re Lupron®*  
 8 *Marketing & Sales Practices Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005) (“When a settlement class is  
 9 proposed, it is incumbent on the district court to give heightened scrutiny to the requirements of Rule  
 10 23 in order to protect absent class members.”).<sup>1</sup> These concerns would be avoided, however, by first  
 11 addressing the Direct Plaintiffs’ pending motion for class certification.

12 In any event, the draft forms of notices submitted by Direct Plaintiffs with their proposed  
 13 order are inaccurate, and underscore the point that the Motion for Preliminary Approval is  
 14 premature. The forms of notices incorrectly state that the Court has “certified a litigated class”  
 15 coextensive with the proposed “settlement class,” and has “ordered that the case may proceed as a  
 16 class action.” (Proposed Order (Dkt. 1442), Ex. A at 2, Ex. B at 2.) These statements are not true  
 17 now, and may never be. When this Court rules on the pending class certification motions, and if it  
 18 certifies a direct purchaser class, it may then be appropriate to send a combined notice that covers  
 19 both that ruling and the proposed CPT settlement (if approved). Proceeding as Direct Plaintiffs  
 20 propose now, however, will likely cause only confusion.

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 25 <sup>1</sup> *Manual for Complex Litigation (Fourth)* § 21.132 (2004). *See also* 4 William B. Rubenstein  
 26 et al., *Newberg on Class Actions* § 11.27 (4th ed. 2006) (“approval under Rule 23(e) of settlements  
 27 involving settlement classes . . . requires closer judicial scrutiny than approval of settlements where  
 28 class certification has been litigated”).

1 DATED: January 15, 2010

2 WILMER CUTLER PICKERING HALE & DORR LLP

3 By: /s/ Gordon Pearson

4 Gordon Pearson

5 Steven F. Cherry (*pro hac vice*)

6 Gordon Pearson (*pro hac vice*)

1875 Pennsylvania Avenue NW

Washington, DC 20006

7 Tel: (202) 663-6000

8 Fax: (202) 663-6363

9 *Attorneys for Defendants Chi Mei Corporation, Chi Mei*  
10 *Optoelectronics Corp., CMO Japan Co., Ltd., Chi Mei*  
11 *Optoelectronics USA, Inc., Nexgen Mediatech Inc., and*  
12 *Nexgen Mediatech USA, Inc.*

13 NOSSAMAN LLP

14 By: /s/ Christopher A. Nedeau

15 Christopher A. Nedeau

16 Christopher A. Nedeau (State Bar No. 81297)

17 50 California Street

18 34th Floor

19 San Francisco, CA 94111

20 Tel: (415) 398-3600

21 Fax: (415) 398-2438

22 *Attorneys for Defendants AU Optronics Corporation and*  
23 *AU Optronics Corporation America*

24 MORRISON & FOERSTER LLP

25 By: /s/ Stephen P. Freccero

26 Stephen P. Freccero

27 Stephen P. Freccero (State Bar No. 131093)

28 425 Market Street

San Francisco, CA 94105

Tel: (415) 268-7000

Fax: (415) 268-7522

*Attorneys for Defendants Epson Electronics America and*  
*Epson Imaging Devices Corporation*

K & L GATES

By: /s/ Hugh F. Bangasser

Hugh F. Bangasser  
Hugh F. Bangasser (*pro hac vice*)  
Ramona Emerson (*pro hac vice*)  
925 Fourth Avenue, Suite 2900  
Seattle, WA 98104-1158  
Tel: (206) 623-7580  
Fax: (206) 623-7022

*Attorneys for Defendant HannStar Display Corporation*

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Kent M. Roger

Kent M. Roger  
Kent M. Roger (State Bar No. 95987)  
One Market  
Spear Street Tower  
San Francisco, CA 94105  
Tel.: (415) 442-1140  
Fax: (415) 442-1001

*Attorneys for Defendants Hitachi, Ltd., Hitachi Displays, Ltd., and Hitachi Electronic Devices (USA), Inc.*

CLEARY GOTTlieb STEEN & HAMILTON LLP

By: /s/ Michael R. Lazerwitz

Michael R. Lazerwitz  
Michael R. Lazerwitz (*pro hac vice*)  
2000 Pennsylvania Avenue NW  
Washington, DC 20006  
Tel.: (202) 974-1500  
Fax: (202) 974-1999

*Attorneys for Defendants LG Display Co. Ltd. and LG Display America, Inc.*

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: /s/ Jacob R. Sorensen

Jacob R. Sorensen

Jacob R. Sorensen (State Bar No. 209134)

50 Fremont Street

San Francisco, CA 94105

Tel.: (415) 983-1000

Fax: (415) 983-1200

*Attorneys for Defendants Sharp Corporation and Sharp Electronics Corporation*

WHITE & CASE LLP

By: /s/ Wayne A. Cross

Wayne A. Cross

Wayne A. Cross (*pro hac vice*)

1155 Avenue of the Americas

New York, NY 10036

Tel: (212) 819-8200

Fax: (212) 354-8113

*Attorneys for Defendants Toshiba America Electronic Components, Inc., Toshiba Corporation, Toshiba Mobile Display Co., Ltd., and Toshiba America Information Systems, Inc.*

Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of this document has been obtained from Christopher A. Nedeau, Stephen P. Freccero, Hugh F. Bangasser, Kent M. Roger, Michael R. Lazerwitz, Jacob R. Sorensen, and Wayne Cross.